

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 13-11-0080

Parcel No. 14-04-151-001

Trinity Building Corporation,

Appellant,

vs.

Buena Vista County Board of Review

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on April 20, 2015. Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, represented Trinity Building Corporation. William R. Stiles, of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, represented the Buena Vista County Board of Review.

Trinity Building Corporation ("TBC") owns the building located at 2015 W. 5th Street, Storm Lake, Iowa. The property is used by the Family Health Center, a clinic operated by Trimark Physicians Group ("Trimark"). Both TBC and Trimark are part of a larger health system called Trinity Health Systems, which in turn is part of an even larger health system, UnityPoint Health.

The commercially classified property was valued at \$1,056,000 on the January 1, 2013, assessment. TBC protested to the Board of Review under Iowa Code section 441.37(1)(a)(1)(c) seeking a tax exempt status for the property under section 427.1(8). The Board of Review denied the protest. TBC then appeal to PAAB.

Findings of Fact

TBC's property is leased to Trimark, which uses the property as a medical clinic in Storm Lake. TBC has been exempt from federal income tax under IRS Code section

501(c)(2) since 1993. (Ex. CC). Trimark filed its application for federal tax exemption in approximately 2012 and was granted 501(c)(3) status in late 2013, after the assessment date. (Ex. 6). Trinity Health Systems also is exempt from tax under IRS Code section 501(c)(3). TBC files a Form 990 return and its sole purpose is to hold title to property and turn all income therefrom over to Trinity Health Systems. (Ex. 7A-D). TBC does not have any unrelated business income. (Ex. 7A-D). TBC, Trimark, and Trinity Health Systems' Articles of Incorporation all contain a prohibition against private inurement of profits. (Exs. E p. 4; Z p.2).

Michael Dewerff, CFO of UnityPoint Health, testified on TBC's behalf. Dewerff stated he filed the application with the Buena Vista County Assessor seeking an exemption for the subject property. The initial application did not provide much detailed information regarding the property's use, and thus, a second application was submitted. (Exs. H & 2). The second application indicated,

Trimark is organized and operated as a not-for-profit integrated medical group practice that provides medical services, through licensed physicians and allied health professionals, to the residents located in and around the Fort Dodge, Iowa community [including Storm Lake]. Trimark provides these medical services without regard to race, sex, religion, creed, disability, age, national origin or economic status. It treats Federal health care program patients including Medicare and Medicaid patients on a non-discriminatory basis, and will treat patients unable to pay to the extent of Trimark's financial ability.

(Ex. 2). The application further stated, "Trimark has a charity care policy . . . and provides patient care to a growing number of uninsured and underinsured patients."

(Ex. 2). It also distinguished charity care from bad debt, and noted all or a portion of the bill for those who qualify for charity care will be written off. (Ex. 2). After the application was denied, he protested the denial and assessment to the Board of Review.

In a prepared statement before the Board of Review, Dewerff noted several statistics related to the financial policy. (Ex. 3). Exhibit 3 states that 76% of those individuals applying for assistance in 2012 had 100% of their bill written off as charity care. It further states, 21% of those applying for assistance received partial assistance. (Ex. 3). It is not clear whether the 2012 patient visits were solely visits to the subject clinic or included visits at all TBC owned properties. Dewerff told the Board of Review

he believed the property is entitled to tax exempt status as it is primarily used by Trimark, which is nonprofit, and any profits that are made by TBC go to the parent corporation and are reinvested to into the charitable mission of providing healthcare to residents of the community.

After the Board of Review denied the protest, Dewerff filed TBC's appeal with PAAB.

Dewerff provided background on the UnityPoint System of integrated health care and how TBC, Trimark, and Trinity Health Care fit within this system. He noted that Trimark applied for 501(c)(3) status in approximately 2012 because the physician group was looking at merging into UnityPoint, and at that time, Trimark was the only nonprofit entity within the larger organization.

Dewerff explained that TBC holds title to the subject property and rents it to Trimark. Trimark is the only user of the property. The initial building lease began January 1, 2005, and was for 1 year at a monthly rate of \$5509 (\$66,108 yearly). (Ex. 8). There have been additional yearly extensions since that time. (Ex. 8). For 2012, the premises were rented at a monthly rate of \$6,154.34 (\$73,852.08 yearly). (Ex. 8). Dewerff believes TBC charges fair market rent to Trimark, and predicates this belief on a third-party vendor's study of fair market rents in the Storm Lake area concluding the same. (Ex. 9).

TBC did make a profit leasing buildings as listed in on its IRS 990s: a profit of \$28,827 in 2010; a loss of \$5,442 in 2011; and a profit of \$24,451 in 2012. (Ex. X). This net revenue (and loss) was from the rental of all of its clinic properties (approximately ten) and not solely from the subject property rented to Trimark. Dewerff stated that any profits TBC realizes from leasing the property are eventually turned over to Trinity Health Systems which reinvests the money into the charitable mission. He describes the charitable mission as providing healthcare to residents in the community without discrimination and without regard for their ability to pay.

Dewerff noted Trimark has a Financial Assistance Policy, which is the same policy for the whole Trinity Health (now Unity Point) organization. (Ex. 3). He stated that patients that come through the clinic will be seen without regard for their ability to pay. According to Dewerff, once a patient identifies they are unable to pay, they complete an

application that is reviewed by financial counselors to determine whether they qualify for assistance. He said the program is advertised through the website and through financial counselors. On cross examination, Dewerff stated the process of applying for and receiving financial assistance comes from Trinity Health Systems, as the financial counselors consult patients from all of the entities. He also stated, however, that when a patient is unable to pay and is granted assistance it is the actual physician providing the service that loses money because the amount of assistance is written off; there is no cash transaction.

Ultimately, Dewerff believes the property is used for charitable purposes because the physicians see patients regardless of their ability to pay. Further, TBC is not in the business to make money for any individual or shareholder and any profit it does make is reinvested back into the properties in the Trinity Health Systems organization.

TBC also called Barbara Honold, Director of Tax and Payroll Services with UnityPoint Health, to testify. Honold explained that a 501(c)(2) entity's purpose is to allow 501(c)(3) organizations to transfer their property holdings to a 501(c)(2) and isolate liability. She stated the only way to have 501(c)(2) status is to ultimately distribute all funds to a nonprofit entity. According to Honold, TBC owns approximately ten buildings.

Honold explained certain portions of TBC's 2010 through 2013 income tax returns. (Exs. V-Y). First, it is worth noting that these documents show the income and expenses of all of TBC's property holdings, not just the subject property. (See Exs. V-Y). Honold confirmed that TBC did not immediately pay out its excess earnings from rent to Trinity Health Systems. In fact, TBC did not distribute the earnings to Trinity Health Systems as of December 31, 2012. (*Compare* Ex. 7A-D line 13). TBC finally paid the excess in 2013. (Ex. 7-D). Honold did not clearly explain how Trinity Health Center used the "grant" or distribution of excess earnings, but generally stated it reinvested the money following its charitable purpose. Nevertheless, Honold believes both TBC and Trimark use the subject property for charitable purposes.

Buena Vista County Assessor Kathy Croker testified on behalf of the Board of Review. Croker testified she denied the exemption because she could find no charitable use of the facility beyond the statements contained in the articles of

incorporation. Croker also questioned whether the facility was providing gratuitous care or whether there was actually a need in the community for this service.

Croker questioned whether TBC and Trimark's financial assistance program actually exists. As a patient at this clinic, Croker asserts she has never noticed the program being publicized. Moreover, she stated that when she visited the company's website the link relating to financial assistance was broken. She believes that a patient has to ask if financial assistance is available before being told about it.

Croker also described that in addition to the subject facility, the Storm Lake community receives health services from a county hospital as well as two other health centers in town. She stated that one of these health centers is owned by and attached to the hospital. The majority of this facility is taxable. A second health center, which Croker referred to as the community health center, is exempt from property tax. Croker used the community health center to contrast the operation of TBC and Trimark. She stated the community health center was built for and sustained by federal grant money and has an unpaid, volunteer board of directors. The clinic employs one doctor and nurse practitioner and offers a sliding scale of financial assistance for every person that walks through the door. In her opinion, TBC and Trimark, comparatively, are not acting in this charitable manner.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2013). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

TBC protested its assessment under section 441.37(1)(a)(1)(c) contending the property is exempt from taxation under section 427.1(8). "Exemption statutes are premised on the theory that the benefits received by the community from the facility outweigh the inequality caused by the exemption of the property from taxation." *Bethesda Foundation v. Bd. of Review of Madison County*, 453 N.W.2d 224, 226 (Iowa Ct. App. 1990) (citing *Richards v. Iowa Dep't of Revenue*, 414 N.W.2d 344, 351 (Iowa 1987)). Statutes exempting property from taxation must be strictly construed, and any doubt must be resolved in favor of taxation. *Care Initiatives v. Bd. of Review of Union County*, 500 N.W.2d 14, 16-17 (Iowa 1993). "Taxation is the rule and exemption the exception." *Bethesda Found.*, 453 N.W.2d at 226 (internal citations omitted). The burden is upon the one claiming the exemption to prove that the property falls within one of the exemption statutes. *Care Initiatives*, 500 N.W.2d at 17. Exemptions from taxation must be decided on a case-by-case basis. *South Iowa Methodist Homes, Inc. v. Bd. of Review*, 173 N.W.2d 526, 532 (Iowa 1970).

Iowa Code section 427.1(8) provides an exemption from real property taxation for property owned and or leased by certain charitable, benevolent, educational, and religious organization. This section states:

Property of Religious, Literary and Charitable Societies. All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural and religious institutions and societies solely for their appropriate objects, not exceeding 320 acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit.

Id.

The Iowa Supreme Court noted in *Carroll Area Childcare Center, Inc. v. Carroll County Board of Review*, 613 N.W.2d 252, 254-55 (Iowa 2000), that it has repeatedly held that an entity must prove the following three factors by a preponderance of the evidence to establish the tax exempt status of its property: (1) the entity was a charitable institution at the time of the claimed exemption, (2) the entity did not operate the facility with a view to pecuniary profit, and (3) the actual use of the facility was solely for the appropriate objects of the charitable institution.

A. TBC's Charitable Status

For TBC to show it holds the subject property and Trimark uses the subject property for charitable purposes, it must demonstrate either: “(1) that [it] affords a charitable benefit to its occupants, or (2) that it is a charitable activity.” *Partnership for Affordable Housing v. Bd. of Review of City of Davenport*, 550 N.W.2d 161, 164 (Iowa 1996). The Iowa Courts “give the term ‘charitable’ in the tax exemption statute a broad definition.” *Care Initiatives*, 500 N.W.2d at 17. “The mere fact that an institution is a nonprofit corporation does not make it a charitable institution.” *Bethesda Foundation*, 453 N.W.2d at 227 (citing *Dow City Senior Citizens Housing, Inc. v. Bd. of Review*, 230 N.W.2d 497, 499 (Iowa 1975)).

In determining whether an institution is charitable, the courts look to a number of factors, including whether the institution received a federal tax exemption based on charitable status, and whether the institution's articles of incorporation reveal charitable purposes. *Bethesda Found.*, 453 N.W.2d at 227. The courts have also placed importance upon whether contributions of money, goods, and services played some part in the establishment and operation of a charitable institution. *Richards*, 414 N.W.2d at 353; *Evangelical Lutheran Good Samaritan Society*, 200 N.W.2d 509, 512 (Iowa 1972); *Victor Health Center v. Board of Review*, No. 04-1355, 2005 WL 1964479 (Iowa Ct. App.) (unpublished).

TBC argues both it and Trimark were charitable institutions at the time TBC claimed the exemption. TBC is a nonprofit organization under section 501(c)(2). Honold explained this organization allowed nonprofit organizations to insulate liability by holding property separately under this section. Trimark is now a nonprofit corporation organized as a 501(c)(3). As of the assessment date of January 1, 2013, however, Trimark had not yet received a federal tax exemption. (Ex. 6). Further, it appears the parent company, Trinity Health Systems, is also a 501(c)(3) organization. Trimark's articles of incorporation state its purpose is

“to develop, own, operate, and maintain programs, activities, facilities, property and services for the provision of medical care and other health services for care and treatment of the sick, diseased, disabled, injured or other persons in need of such care, [...] and to engage in and conduct charitable, educational, religious, and scientific activities in furtherance of”

Here, TBC has been granted a federal tax exemption, which weighs in favor of a conclusion that it is a charitable institution. Based on the testimony of Dewerff and Honold and TBC's articles of incorporation, it appears its sole purpose is to hold property and turn over any income in excess of expenses to Trinity Health Systems. (Ex. Z). As these factors relate to Trimark, its articles of incorporation demonstrate a charitable purpose. However, as of the assessment date, Trimark had not received a federal tax exemption.

There was no evidence presented to suggest the subject facility was established in whole, or in part, by contributions of money, services, or goods; or that its continued operations are supported by the same. TBC's tax returns do not show any contributions made to the entity from 2010 to 2013. (Ex. 7).

Rather than make an explicit finding on whether or not TBC and Trimark are charitable institutions, however, "[i]t is the character of the use [...] which determines whether an organization's property is exempt from taxation." *Id.*; see also *Iowa Methodist Hosp. v. Bd. of Review of City of Des Moines*, 252 N.W.2d 390, 392 (Iowa 1977) (noting "it is not the identity of the owner by the character of the use which controls."). We, therefore, turn to whether the property is used solely for charitable objects and without a view toward pecuniary profit. *Id.*

B. Actual Use/Pecuniary Profit

If we assume TBC and Trimark are charitable institutions, the property must be used solely for charitable purposes and without a view toward pecuniary profit. The Iowa Courts have repeatedly recognized "the actual use of the facility is more important than its stated purpose." *Bethesda Found.*, 453 N.W.2d at 227. Additionally, for a leased property, like the subject, both the lessee's and the lessor's use factor in to whether the property is being used for a charitable purpose and should be entitled to an exemption. *Warden Plaza v. Board of Review*, 379 N.W.2d 362 (Iowa 1985). "If the lessor-owner is making a profit on such land or using the rents to its own advantage, then the exemption may not be granted." *Id.* at 367.

"Charity, in the form of gratuitous or partly gratuitous care, can be provided in two ways. An institution can subsidize the care of those who are unable to pay, or it can 'use charitable contributions to cover the costs of establishing the facility and some

portion of the ongoing operating expenses, thereby subsidizing the cost of the facility for all persons who use it, regardless of their ability to pay. *Victor*, No. 04-1355, 2005 WL 1964479 (citing *Carroll Area Child Care Ctr., Inc.*, 613 N.W.2d at 255). There is no evidence of the latter, so we consider only whether TBC/Trimark has subsidized the care for those unable to pay to show a charitable use of the subject property.

The testimony established that TBC leased the subject property at rates equivalent to the prevailing market. Honold and Derwerff's testimony indicate TBC's sole purpose is to hold title to real estate, receive rents, and distribute rents paid to Trinity Health Systems.

Trimark has adopted the Trinity Health Systems' Financial Aid Policy. TBC presented scant evidence of how Trimark applies this policy in its practice, instead focusing on the fact that the policy exists. Dewerff noted the statistics related to the financial aid policy in his written comments to the Board of Review. However, it is not clear whether these figures apply solely to aid provided at the subject property or include services rendered at all ten of TBC's rented clinics.

Further, although there is no bright-line test of the amount of charitable care provided, these figures give no real picture of the number of patients that are receiving financial aid. See *Victor*, No. 04-1355, 2005 WL 1964479 *2 (noting only six patients at the Victor facility had benefited from the charity care program, but to date no individual who applied had been turned down).

In addition, the use of the facility cannot be for pecuniary profit. "The term 'pecuniary profit' refers to the monetary gain which inures to the benefit of private individuals." *Care Initiatives*, 500 N.W.2d at 17. A charitable organization is not required to "run in the red." *Bethesda Found.*, 4523 N.W.2d at 228. (TBC brf. p. 5). Nonetheless, any profit is not to be "used for anything but charitable purposes." *Id.*

TBC argues the clinic is not operated with a view to pecuniary profit because it claims no amounts inure to the benefit of any private individual. (TBC brf. p. 4). It asserts that any income TBC or Trimark receive in excess of expenses is eventually sent to Trinity Health Systems. (TBC brf. p. 4).

TBC primarily relies on *Victor*, No. 04-1355, 2005 WL 1964479. (TBC brf. p. 4). Like the present case, *Victor* involved a local health care facility leased and operated by

a non-profit corporation, the Grinnell Regional Medical Center. *Id.* In concluding the property was not operated with a view toward pecuniary profit, the *Victor* Court noted that “Grinnell charges less for the services than the services cost to provide” and “it has operated the clinic at a loss from its opening.” *Id.* Here, there is no such evidence from which this Board can come to a similar conclusion.

The Board of Review asserts that the commingling of the excess income and the use of this excess income for other operations requires denial of the exemption. In *Bethesda*, the Board of Review argued the subject facility was operated with a view toward pecuniary profit because it was commingling funds of that facility with the funds of the entire foundation. 453 N.W.2d at 228. The *Bethesda* Court also found “no support [...] which suggests the commingling of funds derived from the Winterset facility with the general funds of the Foundation defeats Bethesda’s right to tax exempt status.” *Id.* However, the evidence in that case showed at least some of the money had been reinvested in the Winterset facility.

In this case, TBC, while part of the organization, turns any and all profit over to Trinity Health Systems to invest into its charitable purposes at the Fort Dodge hospital facility according to testimony from Dewerff and Honold. It would not appear this excess income is reinvested into the subject facility, or at the very least, there was no testimony regarding any such reinvestment. *Compare Evangelical Lutheran Good Samaritan Soc. v. Board of Review of Fayette County*, 276 N.W.2d 413, 416 (Iowa Ct. App. 1978) (noting excess funds are used at the facility which generates them). Furthermore, there was no specific evidence relating to how Trinity Health Systems actually used the disbursement of funds for charitable purposes consistent with its mission. *Bethesda Found.*, 453 N.W.2d at 228. Instead, like many of the facts in this case, reference was merely made to the existence of the charitable mission rather than demonstrative evidence of that mission in practice.

Finally, as it relates to the need for these services in the community, TBC was unable to provide evidence to suggest that the services would not be available but for the subject facility. In *Victor*, the court noted the services provided by the facility were not available elsewhere in the community. In this case, at least two other medical facilities exist in the community in addition to a general hospital. As previously noted,

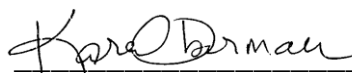
“[t]he theory behind tax exemption statutes is that the benefits received by the community from the facility outweigh the inequality caused by the tax exemption.” *Richards*, 414 N.W.2d at 351. In this case, we find TBC is not entitled to the exemption as it has failed to demonstrate any community benefit outlined in *Victor* and has not shown the subject facility is used solely for charitable purposes.

Order

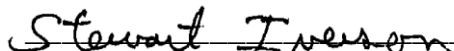
IT IS THEREFORE ORDERED the January 1, 2013, assessment of the subject property as set by the Board of Review is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

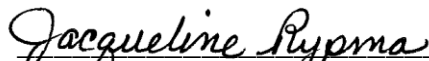
Dated this 30th day of July, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:
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William Stiles